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June 15, 2004

RECEIVED
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PUBLIC SERVICE
COMMISSION

via Hand Delivery
Ms. Beth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

Re: *Ballard Rural Telephone v. Jackson Purchase Rural Electric Cooperative Corporation, Case No. 2004-00036*

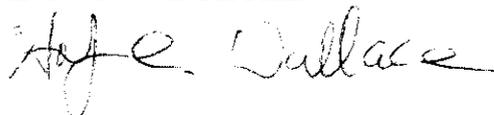
Dear Ms. O'Donnell:

Enclosed for filing with the Public Service Commission of the Commonwealth of Kentucky (the "Commission") is one original and ten (10) copies of Ballard Rural Telephone Cooperative Corporation Inc.'s Motion for Summary Judgment in the above-styled case.

Thank you, and if you have any questions with regard to this matter, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



Holly C. Wallace

HCW/rk
Enclosure

cc: Mr. Harlon Parker (w/enclosure)
John E. Selent, Esq. (w/o enclosure)

90122v3; 31471-1

Marshall, McCracken, and Livingston Counties. (*See Testimony of Richard Sherrill ("Sherrill Testimony")*) pp. 2-3, attached as Exhibit A). For 50 years, Ballard Rural and Jackson Purchase have provided each other with pole attachment services pursuant to a general agreement for joint use of wood poles executed by the parties on June 5, 1954 (the "1954 Agreement"). (*See Ex. A, Sherrill Testimony*, p. 3). The 1954 agreement was never filed with nor approved by the Commission. That agreement and the pole attachment rates charged by Jackson Purchase to Ballard Rural form the basis for Ballard Rural's complaint.

Pursuant to the 1954 agreement, Jackson Purchase charged Ballard Rural between \$.60 to \$1.30 per pole to attach its facilities. (*See Testimony of Harlon E. Parker ("Parker Testimony")*, p. 5, attached as Exhibit B). In 1974, the rates were adjusted to a maximum of \$3.00 per pole regardless of height. (*See Ex. B, Parker Testimony*, p. 5). Ten years later, the Commission approved a similar rate for Jackson Purchase to charge cable television companies. Specifically, the Commission approved Jackson Purchase's Cable Television Attachment Tariff ("CTAT"), which provided for pole attachment rates for cable television ("CATV") companies ranging from \$1.75 to \$3.10. (*See Jackson Purchase CTAT, P.S.C. No. 7, First Revised Sheet No. 10.0, canceling P.S.C. No. 6, original sheet No. 10, attached as Exhibit C*). The parties continued to operate under the \$3.00-per-pole rate until Jackson Purchase unilaterally proposed to increase its rates by almost 500% in September of 2002. (*See Sherrill Testimony*, pp. 4-5).

Rather than enter into negotiations with Ballard Rural to amend the rates charged under the 1954 Agreement, Jackson Purchase attempted to force the unprecedented increase in pole attachment rates on Ballard Rural. (*Ex. A, Sherrill Testimony*, p. 5, lines 10-12). Although the parties had had a positive working relationship for 50 years (*see Ex. A, Sherrill Testimony*, p. 3, lines 17-20), Jackson Purchase did not meet with Ballard Rural to discuss the proposed rates

until April 2003, seven months after Jackson Purchase first informed Ballard Rural of the significant increase in pole attachment rates. (See Ex. A, *Sherrill Testimony*, p. 5, lines 10-12). About that same time, Jackson Purchase informed Ballard Rural that it was terminating the 1954 agreement and that Ballard Rural should remove all of its attachments from Jackson Purchase's poles. (See April 23, 2003 letter from G. Kelly Nuckols to Harlon E. Parker ("Termination Letter"), attached as Exhibit D). Specifically, Jackson Purchase informed Ballard Rural that: "You should begin removal of your attachments from our poles no later than six months from the date of your receipt of this letter." (Ex. D, Termination Letter). Further discussions ensued following Jackson Purchase's notice of termination of the 1954 Agreement; however, they ended in failure. Accordingly, Ballard Rural was forced to file the complaint that gave rise to the present case.

ARGUMENT AND ANALYSIS

Pursuant to KRS 278.310, "[a]ll hearings and investigations before the Commission or any commissioner shall be governed by rules adopted by the Commission, and in the conduct thereof, neither the Commission nor the commissioner shall be bound by the technical rules of legal evidence." Although proceedings before the Commission are governed by rules adopted by the Commission, the standard utilized by Kentucky courts in determining whether to grant a motion for summary judgment is persuasive. Just as the courts, for purposes of judicial economy, seek to resolve cases on summary judgment where no issue of material fact exists, the Commission, for purposes of administrative economy, seeks to summarily resolve cases where the circumstances so warrant. The circumstances so warrant in this case. There are no genuine issues of material fact. The only issues in dispute are of a legal nature which the Commission may resolve on a motion for summary judgment.

The purpose of a summary judgment motion is to “expedite the disposition of cases and avoid unnecessary trials when no genuine issues of material fact are raised” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, Ky. 807 S.W.2d 476, 480 (1991). The motion should be granted when, after reviewing the facts in a light most favorable to the non-movant, “as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor.” *Id.*

It is not impossible to meet the standard for granting summary judgment motions established by the Kentucky Supreme Court in *Steelvest*. “Contrary to the view of some, our decision in *Steelvest* [] does not preclude summary judgment. Provided litigants are given an opportunity to present evidence which reveals the existence of disputed material facts, and upon the trial court’s determination that there are no such disputed facts, summary judgment is appropriate.” *Hoke v Cullinan*, Ky. 914 S.W.2d 335 (1995). More recently, the Kentucky Supreme Court, in *Welch v. American Publishing Company of Kentucky d/b/a The Daily News, et al.*, Ky. 3 S.W.3d 724, 729-30 (1999), stated that while “much attention has been given to the use of the word impossible” in the *Steelvest* opinion, “*Steelvest* did not repeal C.R. 56” which mandates summary judgment if “there is no genuine issue as to any material fact.” *Id.* at 10; C.R. 56.03. Thus, under *Hoke* and *Welch*, the non-moving party must present evidence of record to preclude the entry of summary judgment. When there is a complete failure of proof concerning an essential element of the non-moving party’s case, there can be no genuine issue of material fact, thus, summary judgment must be granted. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

In the present case, there are no genuine issues of material fact. Jackson Purchase has failed to present any evidence to justify charging Ballard Rural anything other than the rates

established in its CTAT filed with the Commission. Viewing the facts in a light most favorable to Jackson Purchase, and assuming the facts to be as it alleges them, Jackson Purchase, as a matter of law, cannot establish that the proposed pole attachment rates are fair, just, reasonable and non-discriminatory. Therefore, Ballard Rural is entitled to summary judgment.¹

I. THE COMMISSION HAS JURISDICTION OVER POLE ATTACHMENT RATES.

Pursuant to KRS 278.040, the Commission has exclusive jurisdiction over the rates and services of regulated utilities within the Commonwealth of Kentucky. The Commission is charged with ensuring that the rates are fair, just and reasonable, and that the services are adequate, efficient, and reasonable. KRS 278.030. In addition, the Commission has jurisdiction over any claims that a utility is discriminating with regard to rates or services. KRS 278.170. Service is defined as “any practice or requirement in any way relating to the service of any utility” KRS 278.010(13). The broad statutory definition of service includes pole attachments. *Order*, Case Nos. 8040 and 8090, August 26, 1981 p. 8 (“While . . . [pole attachments] may not be one of the ‘services’ contemplated when the statutory definition was created in 1934, nor even a ‘public utility’ activity generally, it is clearly a ‘service’ within the broad definition set forth in KRS 278.010.”). In so holding, the Commission established jurisdiction over pole attachment rates. Moreover, pursuant to 47 U.S.C. § 224(c)(2), the Commission certified to the Federal Communications Commission that “it has assumed jurisdiction over and regulates pole

¹ Ballard Rural notes that the requirement in KRS 278.260(1) that “[n]o order affecting the rates or service complained of shall be entered by the Commission without a formal public hearing” is inapplicable in the present case. KRS 278.260(1) must be read within the context of the entire chapter and, specifically, in conjunction with KRS 278.160. KRS 278.160 requires utilities to file “all rates and conditions for service established by it and collected or enforced.” When a filed rate is challenged pursuant to KRS 278.260, subsection (1) requires the Commission to hold a formal public hearing before issuing an order affecting the filed rate. The Commission is not required, however, to hold a formal public hearing to order a utility to stop charging rates outside of the utility’s tariff or filed and approved contract. This is the situation in the present case. Therefore, the requirement in KRS 278.260(1) is inapplicable and the Commission may dispose of this case on summary judgment.

attachment rates, terms and conditions of jurisdictional utilities.” *Certification*, Case Nos. 8040 and 8090, January 28, 1988, p. 2.

Upon appeal of the Commission’s Order of August 26, 1981, the Kentucky Court of Appeals affirmed the Commission’s jurisdiction over pole attachment rates. “We must agree with the finding by the Commission that the rates charged for pole attachments are ‘rates’ within the meaning of KRS 278.040, and that the pole attachment itself is a ‘service’ within the meaning of the statute.” *Kentucky CATV Association v. Volz*, 675 S.W.2d 393, 396 (Ky. App. 1983). The court recognized that the Commission has jurisdiction over pole attachment rates with regard to utilities: “We have already concluded that the Kentucky statutes authorize the Public Service Commission to exercise jurisdiction over pole attachment agreements with utilities in Kentucky. The Public Service Commission is the natural state agency to consider the interests of cable television subscribers *as well as the interests of the consumers of various utility services*. The Commission has accepted that task.” *Volz*, 675 S.W.2d at 397 (emphasis added).

In accordance with the Commission’s Orders and *Kentucky CATV Association v. Volz*, Jackson Purchase is charging Ballard Rural a rate for service when it charges Ballard Rural for placing attachments on its poles. Because Jackson Purchase is charging Ballard Rural a rate for service by a regulated utility, the Commission must ensure that Jackson Purchase’s pole attachment rates are fair, just, reasonable, and non-discriminatory. Accordingly, the Commission has jurisdiction over pole attachment rates and, pursuant to KRS 278.040, it must exercise it in this case.

II. JACKSON PURCHASE CANNOT DEMONSTRATE THAT THE PROPOSED POLE ATTACHMENT RATES ARE FAIR, JUST, REASONABLE AND NON-DISCRIMINATORY.

Jackson Purchase has failed to provide any evidence that its proposed pole attachment rates are fair, just, reasonable and non-discriminatory. Therefore, the Commission should enjoin Jackson Purchase from charging those rates.

“[E]ach utility shall file with the Commission . . . schedules showing all rates and conditions for service established by it and collected or enforced.” KRS 278.160(1). “No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that described in its filed schedules” KRS 278.160(2). Moreover, the utility bears the burden to establish that its proposed rates are just and reasonable. *See Order*, Case No. 2003-00284, October 16, 2003, p. 1 (“The utility has the burden of proof to show that the requested change of rate is just and reasonable,”); *see also Kentucky American Water Company v. Commonwealth of Kentucky, ex rel.*, 847 S.W.2d 737, 741 (Ky. 1993).

Pursuant to the Commission's orders and Kentucky case law, Jackson Purchase has the burden to demonstrate that its proposed rates are just, reasonable and non-discriminatory. Jackson Purchase has not satisfied that burden. There is absolutely no evidence of record to justify the proposed rates. It is insufficient, as a matter of law, for Jackson Purchase to simply allege that the rates are reasonable, there must be some *evidence of record* demonstrating that the rates are reasonable. There is no such evidence of record here.

Q22 Can the new rates proposed by JPEC for Ballard be cost justified?

A22 Yes.

Q23 What economic factors can be used to cost justify the new rates?

A23 The embedded cost of the pole facilities being occupied by the joint user, the annual carrying costs associated with maintaining these pole facilities which include depreciation, interest expense, operations and maintenance items, customer service expenses related to the joint users, and administrative and overhead expenses of JPEC in general. In addition, there is an avoided cost component that arises when there is a significant deviation from the ownership percentages anticipated in a joint use relationship. Finally, there are other, more subjective costs that arise when the ownership percentage gets skewed too far. Examples of these would be additional emergency replacements of poles destroyed by accidents, increasing burden on one entity to maintain records of the others pole use, and return trips to remove old poles after the joint user has transferred its facilities.

Q24 Do you feel these new rates are excessive?

A24 No.

Q25 Does this conclude your testimony?

A25 Yes.

(Ex. A, *Sherrill Testimony*, p. 6).

The testimony quoted above is the only evidence of record presented by Jackson Purchase to justify the proposed rates. The testimony does nothing more than identify economic factors used in calculating pole attachment rates. There is absolutely no evidence of record demonstrating why the proposed rates are the right rates—the just, reasonable and non-discriminatory rates. Jackson Purchase cannot satisfy its burden of proof by simply identifying economic factors and expecting the Commission and Ballard Rural to blindly accept that they justify a 460% increase in pole attachment rates. When there is a complete failure of proof concerning an essential element of the non-moving party's case, there can be no genuine issue of material fact, thus, summary judgment must be granted. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). There is a complete failure of proof in the present case. Jackson Purchase has presented no evidence to support the proposed pole attachment rates. Therefore, the

Commission should grant Ballard Rural's motion for summary judgment and enjoin Jackson Purchase from charging the proposed rates.

III. THE COMMISSION SHOULD ORDER JACKSON PURCHASE TO CHARGE BALLARD RURAL ITS CTAT RATES.

Jackson Purchase has a CTAT on file with, and approved by, the Commission. Given the Commission has already identified and approved a methodology for calculating pole attachment rates, and given Jackson Purchase's CTAT is presumably based on that methodology, the Commission should order Jackson Purchase to apply its CTAT rates to Ballard Rural.

The Commission asserted jurisdiction over pole attachment rates in Case Nos. 8040 and 8090. Subsequent to the Commission's August 26, 1981 order in those cases, the Commission certified to the Federal Communications Commission that "it has assumed jurisdiction over and regulates pole attachment rates, terms and conditions of jurisdictional utilities." *Certification*, Case Nos. 8040 and 8090, January 28, 1988, p. 2. Although Case Nos. 8040 and 8090 concerned CATV customers, the Telecommunications Act of 1996 expressly provides that an attachment by a telecommunications service provider is a pole attachment within the meaning of the Act. 47 U.S.C. § 224 (a)(4). Moreover, the Commission has found that "[c]onsumers of cable service benefit from the attachment of cable to a pole *in the same way as consumers of telephone service benefit from the attachment of cable to a pole . . .*" *Order*, Case Nos. 9678 and 9800, May 26, 1987, p.3 (emphasis added). Therefore, there is no rational reason to treat telecommunications customers, such as Ballard Rural, differently than CATV customers.²

² Jackson Purchase attempts to distinguish the present case from the facts in Case Nos. 8040 and 8090 by arguing that the parties in the present case have operated under a joint use agreement. Interestingly, this is virtually the same argument that the CATV operators made when they appealed the Commission's orders asserting jurisdiction over pole attachment rates. They argued that "a pole attachment arrangement is not within the statutory scheme of regulating utility rates and services," and that "cable systems and pole attachment agreements have existed for many years, during which time the Commission has had no jurisdiction over the subject . . . [therefore] . . .

In Administrative Case No. 251, the Commission approved a uniform methodology for utility companies to formulate fair and just pole attachment rates. In order to protect customers such as CATV operators from unreasonable, unjust and discriminatory practices of monopolistic utilities, the Commission stated that "CATV operators must have the right to receive service (make pole attachments) just as telephone and electric customers have the right to receive service." *Order*, Administrative Case No. 251, August 12, 1982, p. 2. The intent was to place CATV operators on equal footing with other utilities, not to place CATV operators in a more advantageous position. "No utility shall, as to rates or service, give any unreasonable preference or advantage to any person" KRS 278.170(1).

Ballard Rural is no less a customer of Jackson Purchase than is a CATV operator. The fact that Ballard Rural is also a provider of pole attachment services makes it no less of a customer. Utility companies regularly act as both providers and customers of utility services. Ballard Rural receives pole attachment services from Jackson Purchase just as CATV operators do. Ballard Rural is at the mercy of Jackson Purchase's monopolistic power just as CATV operators were prior to Administrative Case No. 251. Jackson Purchase abused its monopoly power and discriminated against Ballard Rural when it issued an ultimatum forcing Ballard Rural to choose between a 460% increase in rates or vacating 3,292 poles. This is a classic example of a monopolist abusing its power, and further evidence of why the Commission asserted jurisdiction over pole attachment rates in the first place. The Commission did so to protect entities such as Ballard Rural and their customers from this abuse of monopoly power. "Because

without further statutory changes in Kentucky, the Commission has no jurisdiction." *Volz*, 675 S.W.2d at 395. The Commission and the courts disagreed with that argument then, and they should do so again now.

of their monopoly status, such services should be regulated in the public interest.” *Order*, Case Nos. 8040 and 8090, p. 8.

Jackson Purchase has offered no direct testimony justifying why the pole attachment rates it charges Ballard Rural should be substantially higher than the rates it charges CATV customers. Jackson Purchase does not allege that the facilities Ballard Rural attaches to its poles are materially different than the facilities attached by CATV customers. Jackson Purchase does not allege that it incurs significantly higher costs in providing pole attachment services to Ballard Rural than to CATV customers, nor does it allege that the services it provides Ballard Rural are substantially different from the services it provides CATV customers. In fact, Jackson Purchase provides absolutely no evidence justifying the rates it proposes to charge Ballard Rural. Utilities may not engage in "unreasonable rate discrimination between similarly situated customers." *Order*, Case No. 97-107, October 12, 1998, p. 9. Given Jackson Purchase has not, and cannot, justify its proposed rates, and given “no utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage,” (KRS 278.170) the Commission should order Jackson Purchase to charge Ballard Rural its CTAT rates.

IV. JACKSON PURCHASE MUST REFUND \$122,723 TO BALLARD RURAL FOR RATES CHARGED IN EXCESS OF ITS TARIFF.

Jackson Purchase failed to file with the Commission the pole attachment rates charged to Ballard Rural; therefore, Jackson Purchase had no basis for charging those rates. Accordingly, the Commission should order Jackson Purchase to refund those charges to Ballard Rural.

Pursuant to KRS 278.040, the Commission has exclusive jurisdiction over the rates and services of regulated utilities within the Commonwealth of Kentucky. *See Simpson County*

Water District v. City of Franklin, 872 S.W.2d 460 (Ky. 1994). Rate is defined as “any individual or joint fare, toll, charge, rental or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement or privilege in any way relating to such fare, toll, charge, rental or other compensation, and any schedule or tariff or part of a schedule or tariff thereof.” KRS 278.010 (10). Moreover, “rates charged for pole attachments are ‘rates’ within the meaning of KRS 278.040” *Volz*, 675 S.W.2d at 396. “[E]ach utility *shall* file with the Commission . . . schedules showing all rates and conditions for service established by it and collected or enforced.” KRS 278.160(1) (emphasis added). “No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that described in its filed schedules” KRS 278.160(2).

Jackson Purchase cannot allege, nor does it, that it filed the pole attachment rates that it charged Ballard Rural. Nonetheless, Jackson Purchase has charged Ballard Rural those rates since 1954. Moreover, even after Jackson Purchase filed its CTAT with the Commission, it failed to apply the tariffed pole attachment rates to Ballard Rural. *See Answer*, paragraph 6. “No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules” KRS 278.160(2). It is undisputed that Jackson Purchase has been charging Ballard Rural non-filed, pole attachment rates for 50 years. “Public utilities may not impose charges that are not prescribed in their tariffs and the Commission may require them to refund any such charges that are collected.” *Order*, Case No. 99-210, July 11, 2000, p.2. Accordingly, pursuant to KRS

278.160(2), the Commission should order Jackson Purchase to refund \$122,723³ to Ballard Rural for pole attachment fees collected in excess of its filed rates.

CONCLUSION

For the reasons set forth above, the Commission should grant Ballard Rural's motion for summary judgment. There are no genuine issues of material fact. Viewing the facts in a light most favorable to Jackson Purchase, as a matter of law, Jackson Purchase cannot justify the pole attachment rates that it proposes to charge Ballard Rural. Therefore, the Commission should grant Ballard Rural's motion for summary judgment.

Respectfully submitted,



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**COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.**

³ Jackson Purchase billed Ballard Rural \$122,723 in pole attachment charges from 1970 through 2002. During this same time period, Ballard Rural billed Jackson Purchase \$5,462 for pole attachments. Therefore, the net amount billed by Jackson Purchase to Ballard Rural from 1970 through 2002 is \$117,261.

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing was served via fax and First Class United States Mail, postage prepaid, to the following individuals this 15th day of June, 2004:

W. David Denton
Walter R. Luttrull III
Denton & Keuler, LLP
555 Jefferson Street
P.O. Box 929
Paducah, KY 42002-0929

G. Kelly Nuckols
President & CEO
Jackson Purchase Energy
Corporation
2900 Irvin Cobb Drive
P.O. Box 4030
Paducah, KY 42002-4030



**COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
APR - 7 2004
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

BALLARD RURAL TELEPHONE
COOPERATIVE CORPORATION, INC.

PSC CASE NO. 2004-00036

v.

JACKSON PURCHASE ENERGY CORPORATION

Testimony of Richard Sherrill

- 1 Q1 State your name and business address.
2
3 A1 Richard T. Sherrill
4 2900 Irvin Cobb Blvd.
5 Paducah, KY 42002
6
7 Q2 Where are you employed?
8
9 A2 Jackson Purchase Energy Corporation.
10
11 Q3 In what capacity are you employed by Jackson Purchase?
12
13 A3 I am Vice President of engineering and operations.
14
15 Q4 What are the responsibilities and duties?

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A4 I oversee engineering and construction of all of JPEC's substations and distribution lines, system maintenance crews and warehouse operations.

Q5 How long have you been employed as Vice President?

A5 Three and a half years.

Q6 How long have you been an employee of the JPEC?

A6 Three and a half years.

Q7 In what other capacities have you been employed by JPEC?

A7 None.

Q8 Briefly describe your educational background.

A8 I received a bachelors of science degree in electrical engineering from the university of Arkansas in 1972. I am a registered Professional Engineer in the States of Kentucky, Arkansas and Florida.

Q9 What geographical area of the Commonwealth does Jackson Purchase serve, and within its service territory approximately how many member/customers are furnished electric current?

1 A9 JPEC serves over 27,000 customers in Ballard, Carlisle, Graves, , Marshall, McCracken, and
2 Livingston counties.

3

4 Q10 In your capacity as Vice President, are you familiar with the 1954, General Agreement for
5 Joint Use of Wood Poles, between JPEC and Ballard Rural Telephone?

6

7 A10 Yes.

8

9 Q11 How did the agreement work?

10

11 A11 The Agreement allowed JPEC and Ballard to utilize each others poles to avoid duplication of
12 facilities thus reducing the costs incurred by each to provide service to their customers.. The
13 Agreement was a "joint use" agreement which contemplated that each utility would own a fair
14 and reasonably equivalent percentage of the shared poles. This would result in a minimum
15 amount of annual billings from each to the other.

16

17 Q12 Are you aware of any disagreements between JPEC and Ballard concerning the 1954
18 Agreement prior to this current dispute?

19

20 A12 No.

21

22 Q13 Was the 1954 agreement and its successors, mutual, in that both parties allowed the other to
23 make attachments to their poles?

24

25 A13 Yes.

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Q14 Are you aware of any regulation or other requirement to submit joint pole use agreements to the Public Service Commission?

A14 No.

Q15 To your knowledge, has the PSC ever regulated joint use agreements between utilities concerning pole attachment rates?

A15 No.

Q16 Approximately how many joint use poles does JPEC own that it shares with Ballard, and how many of Ballard's joint use poles have JPEC's attachments?

A16 According to JPEC records, at the end of 2003, BRTC was on 3,288 of JPEC's poles and JPEC was on 170 of theirs.

Q17 Currently what are JPEC and Ballard's pole attachment rates?

A17 Under the 1954 agreement, as amended in the 1970's, JPEC charges \$3.00 per pole and Ballard charges \$4.00 per pole.

Q18 How long have those current rates been in effect?

A18 Since the early 1970's.

1 Q17 In your opinion does the current rate JPEC charges Ballard for pole attachments reflect
2 modern economic conditions compared to when they were first implemented.
3

4 A17 No.
5

6 Q18 When did JPEC propose new pole attachment rates to Ballard?
7

8 A18 An email was sent in the Fall of 2002, proposing a new rate.
9

10 Q19 Did JPEC attempt to negotiate a settlement where a time frame for introducing the new rates?
11

12 A19 Initially no. On April 19, 2003, JPEC met with Ballard representatives in an attempt to
13 negotiate new rates. They indicated at that time that they would accept an immediate increase
14 to \$8.00 per pole and annual stepped increase over 4 years to the rate being paid by Bell
15 South. After that stepped period, the rates would then be renegotiated for another period of
16 time. BRTC was adamant that they would not accept the escalation clause being proposed
17 by JPEC. BRTC also requested some minor language changes to the proposed contract
18 document itself. In August, 2003, JPEC accepted BRTC's offer, prepared a revised contract
19 document and, on August 18, 2003, forwarded appropriate documents to BRTC. Nothing
20 further was heard from BRTC until this claim was introduced against us.
21

22 Q20 Are you familiar with the CATV tariff rates used for cable television pole attachments?
23

24 A20 Yes.
25

1 Q21 Are you aware of any requirement that the methodology for establishing CATV rates needs
2 to be used to regulate joint use agreement rates?

3

4 A21 No.

5

6 Q22 Can the new rates proposed by JPEC for Ballard be cost justified?

7

8 A22 Yes

9

10 Q23 What economic factors can be used to cost justify the new rates?

11

12 A23 The embedded cost of the pole facilities being occupied by the joint user, the annual carrying
13 costs associated with maintaining these pole facilities which include depreciation, interest
14 expense, operations and maintenance items, customer service expenses related to the joint
15 users, and administrative and overhead expenses of JPEC in general. In addition, there is an
16 avoided cost component that arises when there is a significant deviation from the ownership
17 percentages anticipated in a joint use relationship. Finally, there are other, more subjective
18 costs that arise when the ownership percentage gets skewed too far. Examples of these would
19 be additional emergency replacements of poles destroyed by accidents, increasing burden on
20 one entity to maintain records of the others pole use, and return trips to remove old poles after
21 the joint user has transferred its facilities.

22

23

24 Q24 Do you feel these new rates are excessive?

25

1 A24 No.

2

3 Q25 Does this conclude your testimony?

4

5 A25 Yes.

6

7

The undersigned has examined the foregoing direct testimony and states that it is true and correct.

Richard T. Sherrill

STATE OF KENTUCKY)

COUNTY OF McCRACKEN)

The foregoing instrument was acknowledged before me this 4 day of April, 2004, by Richard T. Sherrill, Vice President of engineering and operations of Jackson Purchase Energy Corporation.

My commission expires 7-8-2004

Kaye Buchanan
Notary Public, State at Large



Respectfully submitted,

DENTON & KEULER
P.O. Box 929
Paducah, KY 42002-0929
Tele: 270-443-8253
Facsimile: 270-442-6000

By Walter R. Luttrull, III
Walter R. Luttrull, III
W. David Denton

ATTORNEYS FOR JACKSON PURCHASE ENERGY CORPORATION

I hereby certify that 10 copies
of the foregoing were filed with the
Public Service Commission by
mailing via Federal Express to:

MR. THOMAS DORMAN EXEC. DIR.
PUBLIC SERVICE COMMISSION
215 SOWER BLVD
P O BOX 615
FRANKFORT KY 40601

AND via facsimile transmission to:
Mr. Thomas Dorman, Executive Director,
Commission @ 502-564-3460

True and correct copies of the
foregoing have been mailed to:

HON ANITA MITCHELL ATTY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
P O BOX 615
FRANKFORT KY 40602

AND via facsimile transmission to:

HON JOHN E. SELEN
HON EDWARD T. DEPP
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 W. Jefferson Street
Louisville, KY 40202
(502) 540-2300

on this 6 day of April, 2004.


Walter R. Luttrull, III

CC: Kelly Nuckols,
Jackson Purchase Energy Corporation

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

BALLARD RURAL TELEPHONE)
COOPERATIVE CORPORATION, INC.)
Complainant)

v.)

JACKSON PURCHASE RURAL)
ELECTRIC COOPERATIVE)
CORPORATION)
Defendant)

APR 7 2004

PUBLIC SERVICE
COMMISSION

Case No. 2004-00036

VERIFIED PREFILED DIRECT TESTIMONY °
OF
HARLON E. PARKER
ON BEHALF OF
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.

April 7, 2004



John E. Selent
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COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BALLARD RURAL TELEPHONE)
COOPERATIVE CORPORATION, INC.)
Complainant)

v.)

Case No. 2004-00036

JACKSON PURCHASE RURAL)
ELECTRIC COOPERATIVE)
CORPORATION)
Defendant)

VERIFIED PREFILED DIRECT TESTIMONY
OF
HARLON E. PARKER
ON BEHALF OF
BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.

April 7, 2004

I.
BACKGROUND

1 Q.1. WHAT IS YOUR NAME?

2 A. My name is Harlon E. Parker.

3 Q.2. WHAT IS YOUR OCCUPATION?

4 A. I am the General Manager of Ballard Rural Telephone Cooperative Corporation,
5 Inc. ("Ballard Telephone")

6 Q.3. WHAT IS YOUR BUSINESS ADDRESS AND TELEPHONE NUMBER?

1 A. My business address is 159 W. 2nd Street, LaCenter, Kentucky and my business
2 telephone number is (270) 665-5186.

3 **Q.4. HOW LONG HAVE YOU BEEN THE GENERAL MANAGER OF BALLARD**
4 **TELEPHONE?**

5 A. I have been General Manager of Ballard Telephone since 1981.

6 **Q.5. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AS GENERAL**
7 **MANAGER?**

8 A. I am responsible for the day-to-day operations of Ballard Telephone.

9 **Q.6. AS GENERAL MANAGER, WHAT IS YOUR PHILOSOPHY OF MANAGING**
10 **BALLARD TELEPHONE?**

11 A. My philosophy is simple. It is to provide a variety of quality telecommunications
12 services at an affordable price to the residential and business customers served by Ballard
13 Telephone.

14 **Q.7. HOW LONG HAVE YOU WORKED IN THE TELEPHONE INDUSTRY?**

15 A. I have over 45 years of experience in the rural telephone industry and I have
16 worked at Ballard Rural since 1956.

17 **Q.8. WHAT ARE YOUR TIES TO THE GEOGRAPHIC AREA SERVED BY**
18 **BALLARD TELEPHONE?**

19 A. I live, work and raise my family in rural, western Kentucky. I serve on the
20 Ballard County Rural Economic Development Board. I spend a great deal of time
21 working on economic development issues affecting my rural Kentucky home.

1 **Q.9. WHAT GEOGRAPHIC AREAS IN WESTERN KENTUCKY DOES BALLARD**
2 **TELEPHONE SERVE?**

3 A. It serves all of Ballard County and rural western McCracken County.

4 **Q.10. HOW MANY SUBSCRIBERS DOES BALLARD TELEPHONE HAVE?**

5 A. It has about 5,000 subscribers in Ballard County and about 1,700 subscribers in
6 rural western McCracken County, for a total of about 6,700 subscribers.

7 **Q.11. IS BALLARD TELEPHONE A COOPERATIVE AND WHAT DOES THAT**
8 **MEAN?**

9 A. Yes; and the fact that Ballard Telephone is a cooperative means that it is owned
10 by its subscribers who elect a board of directors who govern the cooperative. I answer to
11 this Board of Directors.

12 **Q.12. WHAT TELECOMMUNICATION SERVICES DOES BALLARD TELEPHONE**
13 **PROVIDE TO ITS SUBSCRIBERS?**

14 A. It provides local exchange carrier telephone services and internet/broadband
15 services to its customers. These services are of a high quality and are provided at an
16 affordable price which are among the lowest in Kentucky, a fact of which I am very
17 proud.

18 **II.**

19 **JACKSON PURCHASE ENERGY CORPORATION**

20 **("JACKSON PURCHASE")**

21 **Q.13. WHAT IS JACKSON PURCHASE?**

1 A. It is a cooperative, meaning it is owned by its customers, and it provides
2 electricity to its customers.

3 **Q.14. DO YOU KNOW WHETHER JACKSON PURCHASE IS ALSO A PROVIDER**
4 **OF CABLE TELEVISION SERVICES, OR THEIR EQUIVALENT?**

5 A. I do not think so. But, I do know that with advances in technology, it is possible
6 for a telephone utility to deliver video services, using its copper telephone cable, which
7 would be the equivalent of cable television services, to its customers. I see no reason
8 why Jackson Purchase could not do the same, that is, use its utility poles to deliver cable
9 television services, or their equivalent. I do know that Ballard Telephone could, at least,
10 technologically do so, if it wanted to. And, Jackson Purchase, like Ballard Telephone,
11 could also offer telecommunications services.

12 **III.**

13 **THE DISPUTE WITH JACKSON PURCHASE**

14 **Q.15. WHY DID BALLARD TELEPHONE FILE THE COMPLAINT IN THIS**
15 **PROCEEDING AGAINST JACKSON PURCHASE ENERGY CORPORATION**

16 A. Ballard Telephone filed the complaint in this case in order to protect its customers
17 from the adverse consequences associated with paying unfair, unjust, and unreasonable
18 rates, as well as from the adverse consequences of paying rates that are discriminatory,
19 for access to the utility poles of Jackson Purchase.

20 **Q.16. WHEN DID BALLARD TELEPHONE SIGN A POLE ATTACHMENT**
21 **AGREEMENT WITH JACKSON PURCHASE?**

1 A. On June 5, 1954, Ballard Telephone signed a General Agreement for Joint Use of
2 Wood Poles (the "1954 Agreement"). (The 1954 Agreement is Exhibit 1 to the
3 Complaint.) The 1954 Agreement sets forth the terms and conditions, and the rates
4 pursuant to which each party would make pole attachments available to the other party.

5 **Q.17. HOW LONG WAS THE 1954 AGREEMENT TO REMAIN IN EFFECT?**

6 A. It was to remain in effect for 25 years, measured from 1954; and, thereafter, it
7 would terminate upon the giving of written notice by either party to the other party not
8 less than three (3) years prior to the date of the proposed termination date.

9 **Q.18. WHAT WERE THE INITIAL RATES UNDER THE 1954 AGREEMENT?**

10 A. The rates range from \$.60 to \$1.30 per pole, depending upon height.

11 **Q.19. WERE THE POLE ATTACHMENT RATES EVER ADJUSTED IN THE 1954**
12 **AGREEMENT?**

13 A. Yes. In a letter agreement of February 2, 1973 the 1973 rates were adjusted to
14 \$1.90 and then in 1974 the rates were adjusted to a maximum of \$3.00 per pole, the
15 current rate regardless of height.

16 **Q.20. WERE ANY OF THE RATES UNDER THE 1954 AGREEMENT EVER FILED**
17 **OR APPROVED BY THE PUBLIC SERVICE COMMISSION OF THE**
18 **COMMONWEALTH OF KENTUCKY?**

19 A. No, not to the best of my knowledge.

20 **Q.21. WHAT HAPPENED IN SEPTEMBER OF 2002?**

21 A. Jackson Purchase proposed a pole attachment rate increase of approximately
22 500%. Specifically, Jackson Purchase proposed to raise its pole attachment rates for

1 Ballard Telephone from \$3.00 per pole to either \$13.79 or \$17.75 per pole, depending
2 upon height.

3 **Q.22. WHAT HAPPENED IN DECEMBER OF 2002?**

4 A. Jackson Purchase sent Ballard Rural a draft pole attachment agreement and in an
5 accompanying transmittal letter proposed to bill all poles at \$13.79 (Jackson Purchase)
6 and \$17.42 (Ballard Telephone). This is approximately a 460% increase.

7 **Q.23. WAS THIS PROPOSAL ACCEPTABLE TO BALLARD TELEPHONE?**

8 A. No, it was not.

9 **Q.24. WHY NOT?**

10 A. Ballard Telephone asked for, but was not provided with any cost justification for
11 this huge increase in pole attachment rates.

12 **Q.25. WHAT HAPPENED ON APRIL 23, 2003?**

13 A. Jackson Purchase sent Ballard Telephone a letter stating as follows:

14 Unfortunately, it appears that we are unable to reach an agreement
15 on a schedule of rentals for pole attachments in order to amend the
16 Joint-Use of Wood Poles Agreement ("Joint Use Agreement").
17 Accordingly, please allow this to serve as notice, pursuant to
18 Article XX of the current joint-use agreement between our
19 companies, of Jackson Purchase Energy Corporation's ("JPEC")
20 intent to terminate this Agreement.
21

22 As per the terms of the joint use agreement, the current agreement
23 will terminate effective three years from the date of your receipt of
24 this letter. You should begin removal of your attachments from
25 our poles no later than six months from the date of your receipt of
26 this letter. All attachments should be removed from JPEC's poles
27 prior to the expiration of the three-year period. We will, of course,
28 do the same. Further, as of this date, JPEC requests that your
29 company make no new pole attachments without the prior, written
30 consent of JPEC.
31

1 Q.26. WHAT WOULD BE THE CONSEQUENCE TO BALLARD TELEPHONE IF IT
2 HAD TO REMOVE ITS TELECOMMUNICATIONS FACILITIES FROM THE
3 UTILITY POLES OF JACKSON PURCHASE?

4 A. Well, that's a good question.

5 First, Ballard Telephone would have to incur the substantial cost of removing its
6 facilities from the utility poles of Jackson Purchase, including a difficult-to-calculate,
7 one-time cost of retirement resulting in an amortization charge of substantial size, most
8 likely in the seven-figure range (\$1,000,000.00). Second, Ballard Telephone would have
9 to incur the substantial cost of duplicating the poles of Jackson Purchase which it
10 presently occupies. This would be a complex and time-consuming endeavor from both a
11 technical and legal prospective. It would require Ballard Telephone to determine whether
12 it needs to acquire right-of-way and then to determine how to go about acquiring that
13 right-of-way from state, local (city and county), and private entities. Ballard Telephone
14 would then face the monumental task of designing, engineering and building those
15 facilities. Finally, the duplication of the Jackson Purchase facilities presently occupied
16 by Ballard Telephone would not be very attractive because where you now have one
17 pole, you would have two.

18 Q.27. IF BALLARD TELEPHONE HAD TO DUPLICATE THE UTILITY POLES OF
19 JACKSON PURCHASE, WOULD THIS IMPAIR THE ABILITY OF BALLARD
20 TELEPHONE TO DELIVER ITS TELECOMMUNICATIONS SERVICE TO ITS
21 CUSTOMERS?

1 A. It very well could. Ballard Telephone occupies many more utility poles
2 belonging to Jackson Purchase than Jackson Purchase occupies utility poles belonging to
3 Ballard Telephone. (Ballard Telephone is on 3,292 poles belonging to Jackson Purchase;
4 and Jackson Purchase is on 170 utility poles belonging to Ballard Telephone.) Ballard
5 Telephone would have to really refocus its efforts on this substantial construction project
6 of erecting many thousands of utility poles and removing its facilities from the utility
7 poles of Jackson Purchase. This could require Ballard Telephone to spend substantial
8 resources consisting of time, labor, and money on what we consider to be an unnecessary
9 endeavor, instead of focusing on the delivery of a variety of quality telecommunication
10 services to our customers at affordable prices.

11 **Q.28. HOW MUCH WOULD IT COST BALLARD TELEPHONE TO DUPLICATE**
12 **THE FACILITIES OF JACKSON PURCHASE WHICH BALLARD**
13 **TELEPHONE PRESENTLY OCCUPIES PURSUANT TO THE 1954**
14 **AGREEMENT?**

15 A. It would cost, probably, in the millions of dollars. Presently, Ballard Telephone
16 occupies 3,292 poles of Jackson Purchase and the replacement cost of each pole, on
17 average, is approximately \$585.00, and multiplying the number of poles times this cost
18 equals \$1.9 Million (3,292 x \$585). And, that would only be part of the cost. Allowing
19 Jackson Purchase to make Ballard Telephone spend this kind of money is economic
20 blackmail, pure and simple.

21 **Q.29. DOES BALLARD TELEPHONE BELIEVE THAT THIS REMOVAL**
22 **ALTERNATIVE WOULD BE REASONABLE?**

1 A. Absolutely not. It would be wholly unreasonable to require Ballard Telephone to
2 spend this kind of money to duplicate facilities which we have occupied for so long just
3 because Ballard Telephone will not pay the exorbitant pole attachment rates now
4 demanded by Jackson Purchase.

5 **Q.30. SINCE 1970, APPROXIMATELY HOW MUCH HAS BALLARD TELEPHONE**
6 **PAID JACKSON PURCHASE FOR POLE ATTACHMENTS PURSUANT TO**
7 **THE 1954 AGREEMENT?**

8 A. It has paid Jackson Purchase approximately \$122,723.00.

9 **Q.31. DOES BALLARD TELEPHONE WANT THIS MONEY BACK AND WHY?**

10 A. Yes, because the rates were not tariffed.

11 **Q.32. WHAT RATES DO BALLARD TELEPHONE BELIEVE ARE FAIR, JUST AND**
12 **REASONABLE AND NON-DISCRIMINATORY?**

13 A. Ballard Telephone believes that a reasonable pole attachment rate would be either
14 the rates established pursuant to the 1954 Agreement (if approved by the Public Service
15 Commission), or the tariffed pole attachment rates of Jackson Purchase applicable to
16 CATV (community antennae television or cable TV) providers.

17 **Q.33. APART FROM RATES, DOES BALLARD TELEPHONE BELIEVE THAT IT**
18 **SHOULD OCCUPY THE UTILITY POLES OF JACKSON PURCHASE**
19 **PURSUANT TO THE TERMS AND CONDITIONS OF JACKSON PURCHASE**
20 **CATV POLE ATTACHMENT TARIFFS OR PURSUANT TO THE 1954**
21 **AGREEMENT?**

1 A. Ballard Telephone would find either alternative to be reasonable at this time.
2 Ballard Telephone believes it would be reasonable to occupy the utility poles of Jackson
3 Purchase pursuant to the 1954 Agreement (if approved by the Public Service
4 Commission) or the CATV pole attachment tariffs of Jackson Purchase. In all events it
5 would be unreasonable to require Ballard Telephone to vacate the utility poles of Jackson
6 Purchase and install its own utility poles at a cost of well over \$1,900,000.00.

7 IV.

8 **INCREASE IN BALLARD TELEPHONE'S POLE ATTACHMENT RATES**

9 **Q.34. IF BALLARD TELEPHONE HAD TO PAY THE 460% POLE ATTACHMENT**
10 **RATE INCREASE NOW DEMANDED BY JACKSON PURCHASE, WOULD**
11 **THAT PLACE UPWARD PRESSURE ON BALLARD TELEPHONE'S RATES?**

12 A. Yes, because it would increase our pole attachment costs payable to Jackson
13 Purchase to, approximately, almost \$45,000.00 per year (\$9,900.00 x 460%). This would
14 increase Ballard Telephone's basic residential rate in excess of six percent (6%).

15 **Q.35. IF BALLARD TELEPHONE DECIDED NOT TO PAY THE 460% RATE**
16 **INCREASE NOW DEMANDED BY JACKSON PURCHASE AND BUILT ITS**
17 **OWN UTILITY POLES WOULD THAT PLACE UPWARD PRESSURE ON**
18 **BALLARD TELEPHONE'S RATES?**

19 A. Yes, substantially; a cost of \$1,900,000 (*see Q and A. No. 28*) would place very
20 substantial upward pressure on our local exchange carrier rates. No way around it.

21 **Q.36. THEN WHY NOT JUST PAY THE RATES DEMANDED BY JACKSON**
22 **PURCHASE?**

1 A. That is not a reasonable alternative. Once you submit to blackmail, it never stops.
2 Ballard Telephone customers really would be at the mercy of Jackson Purchase. We
3 cannot live with a gun at our head, especially when it is held by someone who has
4 demonstrated a willingness to pull the trigger.

5 V.

6 CONCLUSION

7 **Q.37. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY FOR THE**
8 **COMMISSION?**

9 A. Yes.

10 *First*, the Commission should approve Ballard Telephone paying Jackson
11 Purchase pole attachment rates equal to those established under the 1954 Agreement or
12 equal to those set forth in Jackson Purchase's CATV pole attachment tariffs. *Second*, the
13 Commission should order Jackson Purchase not to require Ballard Telephone to vacate
14 the utility poles of Jackson Purchase now or even three years in the future. *Third*, the
15 Commission should require Jackson Purchase to continue to make its utility poles
16 available to Ballard Telephone under either the terms and conditions of the 1954
17 Agreement or the Jackson Purchase CATV pole attachment tariffs. Any other results
18 would approve Jackson Purchase's abuse of its control of its utility poles, which are
19 bottleneck facilities, to extort unfair, unjust, unreasonable and discriminatory rates from
20 Ballard Telephone to the detriment of our 6,700 subscribers. *And, finally*, Jackson
21 Purchase should be required to refund the \$122,733.00 which Ballard Telephone has paid
22 to Jackson Purchase in untariffed pole attachment rates since 1970.

1 **Q.38. DOES THIS CONCLUDE YOUR TESTIMONY?**

2 A. Yes, it does. And I thank the Public Service Commission for its time and
3 attention to this important matter.

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VERIFICATION

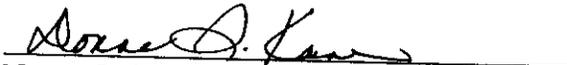
Harlon E. Parker, after being duly sworn, states that he has read the foregoing Verified Prefiled Direct Testimony, and that the statements set forth therein are true to the best of his information and belief.


Harlon E. Parker

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF Fayette)

SUBSCRIBED AND SWORN to before me a notary public by Harlon E. Parker, to me known, this 7th day of April, 2004.

My commission expires: March 25, 2006

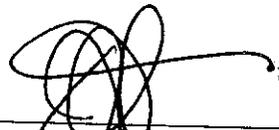

Notary Public, State at Large

CERTIFICATE OF SERVICE

It is hereby certified that the Prefiled Direct Testimony of Harlon E. Parker on behalf of Ballard Rural Telephone Cooperative Corporation, Inc. was served by mailing a copy of the same by First Class United States Mail, postage prepaid, to the following individuals this 7th day of April, 2004:

W. David Denton
Denton & Keuler, LLP
555 Jefferson Street
P.O. Box 929
Paducah, KY 42002-0929

G. Kelly Nuckols
President & CEO
Jackson Purchase Energy
Corporation
2900 Irvin Cobb Drive
P.O. Box 4030
Paducah, KY 42002-4030



John E. Selent
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 W. Jefferson Street
Louisville, KY 40202
(502) 540-2300 (Office)
(502) 585-2207 (Fax)
john.selent@dinslaw.com (E-Mail)

**COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.**

Form for filing Rate Schedules

Jackson Purchase ECC
For Entire Territory Served
Community, Town or City

P.S.C. NO. 7

First Revised SHEET NO. 10.0

CANCELLING P.S.C. NO. 6

Original SHEET NO. 10.0

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CLASSIFICATION OF SERVICE													
CTAT (Cable Television Attachment Tariff)	RATE PER UNIT												
<p>APPLICABILITY: In all territory served by the company on poles owned and used by the company for their electric plant.</p> <p>AVAILABILITY: To all qualified CATV operators having the right to receive service.</p> <p>RENTAL CHARGE: The yearly rental charges shall be as follows:</p> <table border="0"> <tr> <td>Two-party pole attachment</td> <td>\$2.27</td> </tr> <tr> <td>Three-party pole attachment</td> <td>\$1.75</td> </tr> <tr> <td>Two-party anchor attachment</td> <td>\$3.10</td> </tr> <tr> <td>Three-party anchor attachment</td> <td>\$2.07</td> </tr> <tr> <td>Grounding Attachment</td> <td>-0-</td> </tr> <tr> <td>Pedestal Attachment</td> <td>-0-</td> </tr> </table> <p>BILLING: Rental charges shall be billed yearly based on the number of pole attachments. The rental charges are net, the gross rate being five percent (5%) higher. In the event the current bill is not paid on or before the date shown on the bill, the gross rates shall apply. Failure of the CATV operator to receive a bill or a correctly calculated bill shall not relieve the CATV operator of its obligation to pay for the service it has received.</p> <p>SPECIFICATIONS: A. The attachment to poles covered by this tariff shall at all times conform to the requirements of the National Electrical Safety Code, 1981 Edition, and subsequent</p>	Two-party pole attachment	\$2.27	Three-party pole attachment	\$1.75	Two-party anchor attachment	\$3.10	Three-party anchor attachment	\$2.07	Grounding Attachment	-0-	Pedestal Attachment	-0-	<p>PUBLIC SERVICE COMMISSION OF KENTUCKY EFFECTIVE JUN 04 1984 PURSUANT TO 807 KAR 5:011, SECTION 9 (1) BY: <i>J. DeLoach</i></p>
Two-party pole attachment	\$2.27												
Three-party pole attachment	\$1.75												
Two-party anchor attachment	\$3.10												
Three-party anchor attachment	\$2.07												
Grounding Attachment	-0-												
Pedestal Attachment	-0-												

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated

Jackson Purchase ECC
FOR Entire Territory Served

P.S.C. KY. NO. 7

Third Revised SHEET NO. 0.0

CANCELLING P.S.C. KY. NO. 6

Second Revised SHEET NO. 0.0

JACKSON PURCHASE E.C.C.

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PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

JUN 3 3 1984

PURSUANT TO 807 KAR 5:011,
SECTION 9(1),

By: George L. Hill
PUBLIC SERVICE COMMISSION MANAGER

DATE OF ISSUE October 9, 1987 DATE EFFECTIVE June 28, 1984
Month Day Year Month Day Year
ISSUED BY David Stiles, Jr., General Manager, Box 3188, Paducah, KY 42002
Name of Officer Title Address



April 23, 2003

Jackson Purchase Ener
P.O. Box 4030 • 2900 Irvin Cobb D
Paducah, KY 42002-40
270/442-7321 • 800/633-44

Your Cooperative Partner by Choice
Visit Our Web Site www.JPEnergy.co

Ballard Rural Telephone Cooperative Corporation, Inc.
P.O. Box 209
La Center, KY 42056-0209

Attn: Mr. Harlon E. Parker, General Manager

Re: Termination of Joint Use Agreement

Dear Sir:

Unfortunately, it appears that we are unable to reach an agreement on a schedule of rentals for pole attachments in order to amend the Joint-Use of Wood Poles Agreement ("Joint Use Agreement"). Accordingly, please allow this to serve as notice, pursuant to Article XX of the current joint-use agreement between our companies, of Jackson Purchase Energy Corporation's ("JPEC") intent to terminate this Agreement.

As per the terms of the joint use agreement, the current agreement will terminate effective three years from the date of your receipt of this letter. You should begin removal of your attachments from our poles no later than six months from the date of your receipt of this letter. All attachments should be removed from JPEC's poles prior to the expiration of the three-year period. We will, of course, do the same. Further, as of this date, JPEC requests that your company make no new pole attachments without the prior, written consent of JPEC.

We have enclosed the billing for 2003 using the rates set out in the existing contract. Payment is due immediately.

Of course, we remain available to discuss these issues at any time.

Sincerely,

G. Kelly Nuckols, President/CEO

GKN:RTS:smi

C: Mr. Kelly Nuckols, President/CEO
Ms. Melissa D. Yates, Denton & Keuler



Your "Touchstone Energy" Partner
The power of human connections



Jackson Purchase Energy
P.O. Box 4030 • 2900 Irvin Cobb Drive
Paducah, KY 42002-4030
270-442-7321 • 800-633-4044

Your Cooperative Partner by Choice
Visit Our Web Site www.JPEnergy.com

March 27, 2003

Billing for 2003

Attn: Chris Denton
Ballard Rural Telephone Cooperative
P.O. Box 209
LaCenter, Ky. 42056

270-462-3611

JPEC	Description	Number	Cost	Total Cost
143.000	2003 Ballard Rural attachments to JPEC:	3282	\$3.00	\$9,876.00
	2003 JPEC attachments to Ballard Rural:	170	\$4.00	\$680.00
	Total Amount Due			\$9,196.00

PLEASE KEEP THIS SHEET FOR YOUR RECORDS. THANK YOU.



Your Touchstone Energy Partner
The power of human connections



Jackson Purchase Energy
P.O. Box 4030 • 2900 Irvin Cobb Drive
Paducah, KY 42002-4030
270/442-7321 • 800/633-4014

Your Cooperative Partner by Choice
Visit Our Web Site www.JPEnergy.com

March 27, 2003

Billing for 2003

Attn: Chris Denton
Ballard Rural Telephone Cooperative
P.O. Box 209
LaCenter, Ky. 42058

270-462-3611

JPEC	Description	Number	Cost	Total Cost
143.000	2003 Ballard Rural attachments to JPEC:	3292	\$3.00	\$9,876.00
	2003 JPEC attachments to Ballard Rural:	170	\$4.00	\$680.00
	Total Amount Due			\$0,196.00

PLEASE RETURN THIS SHEET WITH YOUR PAYMENT. THANK YOU.



Your Touchstone Energy Partner
The power of human connections